



DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO-P-2020-0027]

Extension of the Fast-Track Appeals Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the Fast-Track Appeals Pilot Program, initiated on July 2, 2020, which provides for the advancement of applications out of their turn in the *ex parte* appeals phase of patent prosecution before the Patent Trial and Appeal Board (PTAB or Board). The Fast-Track Appeals Pilot Program permits an appellant who has filed an *ex parte* appeal and received a notice that the appeal has been docketed to file a petition to expedite the review of the appeal. The Fast-Track Appeals Pilot Program sets a target of reaching a decision on an *ex parte* appeal within six months from the date that the appeal is entered into the program.

DATES: *Applicable Date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Duration:* The Fast-Track Appeals Pilot Program will run until July 2, 2022. The USPTO may extend the Fast-Track Appeals Pilot Program (with or without

modification) on either a temporary or a permanent basis, or may discontinue the program after that date.

FOR FURTHER INFORMATION CONTACT: Steven Bartlett, PTAB, by telephone at 571-272-9797 or by email at fasttrackappeals@uspto.gov.

SUPPLEMENTARY INFORMATION: Appeals to the Board are normally taken up for decision in the order in which they are docketed. *See* USPTO Standard Operating Procedure 1, Assignment of judges to panels (Sept. 20, 2018), available at www.uspto.gov/patents/ptab/resources. Currently, the average appeal pendency is about 13 months, down from 15 months in 2020, and from 30 months in 2015. *See* the PTAB statistics available at www.uspto.gov/patents/ptab/statistics. However, a small number of appeals are advanced out of turn due to a special status reflecting, for example, that the appealed case is a reissue application or a reexamination proceeding, or in light of an inventor's advanced age or poor health.

On July 2, 2020, the PTAB adopted, on a temporary basis, the Fast-Track Appeals Pilot Program, under which an appellant may have an *ex parte* appeal to the Board advanced out of turn by filing a petition under 37 CFR 41.3, accompanied by the petition fee set forth in 37 CFR 41.20(a). *See* Fast-Track Appeals Pilot Program, 85 FR 39888 (July 2, 2020) (Fast-Track Notice). The Fast-Track Appeals Pilot Program permits an appellant to accelerate the Board's decision on an *ex parte* appeal, hastening the pace at which patentability determinations are made and products or services embodying those patented inventions are brought to the marketplace, and thus spurring follow-on innovation, economic growth, and job creation. The USPTO provides a form for the Fast-Track petition, Form PTO/SB/451, which is available on the USPTO's website at www.uspto.gov/patents/apply/forms/forms-patent-applications-filed-or-after-september-

16-2012.

The Fast-Track Notice required, *inter alia*, that a petition be filed before July 2, 2021, to participate in the program. The Fast-Track Notice also set a maximum number of 500 appeals that may be advanced through Fast-Track petitions.

The Fast-Track Appeals Pilot Program is hereby extended to accept petitions for advancing out of turn (according “Fast-Track status” to) *ex parte* appeals through July 2, 2022. The requirements for the program remain the same as those set forth in the original notice (*see* Fast-Track Notice, 85 FR 39888), with the following modification regarding the petition limit.

The upper limit of 500 total granted Fast-Track petitions, as set forth in the Fast-Track Notice, is no longer applicable. To maintain the Board’s ability to provide a faster appeal option while timely resolving other appeals, however, the number of granted petitions in the Fast-Track Appeals Pilot Program remains limited to 125 granted petitions per quarter. If a quarterly limit is reached, the PTAB retains the flexibility to accept additional petitions, either for consideration in that quarter or to be held in abeyance for consideration in the next quarter.

The USPTO tracks the number of granted petitions, the average time to answer petitions, and the average time to render a Board decision on the merits of the *ex parte* appeal after a petition grant. Current information and statistics may be viewed on the PTAB website at www.uspto.gov/PTABFastTrack.

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

